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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Albrecht Doerschner

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EXAMINER

SIMMONS WILLIS, TRACEY A

ART UNIT

PAPER NUMBER

1619

NOTIFICATION DATE

DELIVERY MODE

11/16/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com
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Office Action Summary	Application No. 10/578,727	Applicant(s) DOERSCHNER ET AL.	
	Examiner TRACEY SIMMONS WILLIS	Art Unit 1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-23 and 32-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-23 and 32-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1619

DETAILED ACTION***Status of the Claims***

Applicant's amendments filed June 24, 2009 to claims 11, 18-20, and 23 have been entered. Claims 24-31 have been cancelled. Claims 32-39 have been added. Claims 11-23 and 32-39 remain pending in the current application and are being considered on their merits. References not included with this Office action can be found in a prior action. Any rejections or objections of record not particularly addressed below are withdrawn in light of the claim amendments and applicant's comments.

Response to Arguments

Applicant's arguments filed June 24, 2009 have been carefully considered but they are not persuasive.

Applicant alleges Martens does not teach an embodiment with an admixture of anionic surfactants and lipids and that Martens teaches separate phases that are not combined (pg 12).

Examiner notes that the term "admixture" is not used in the instant Specification, therefore no definition is provided. Examiner interprets admixture to be intermingled or blended together in one unit. Examiner also directs applicant to Martens which teaches the two phases (lipid and aqueous containing surfactant) may be mixable or solubilized into each other [pg 3, par 45]. Therefore the invention as a whole would have been *prima facie* obvious at the time it was made.

Applicant alleges Lloyd is not combinable with Martens as Lloyd teaches wipes for hard surfaces and not wipes used on skin and no motivation to combine is presented (pg 13). Examiner notes that Lloyd is directed to a wipe for cleaning hard surfaces, however, Lloyd's

Art Unit: 1619

invention is directed to wipes and Martens teaches wipes. While the use of the wipes differs, the formation of the wipes from specific materials is common to the art, absent evidence to the contrary. Furthermore, the claims are directed to a cleansing article and do not specify a type of cleansing article. Therefore the invention as a whole would have been *prima facie* obvious at the time it was made.

With regard to new claims 37-39, Martens teaches mixtures of oils that can be used in the lipid phase [pg 4, par 64] which include soybean oil and cetyl palmitate [pg 4, par 65 and pg 5, par 78, respectively], discussed in the previous action. Therefore the invention as a whole would have been *prima facie* obvious at the time it was made.

With regard to new claim 32, the foaming property of the article upon rubbing is inherent of sodium laureth sulfate (anionic surfactant) as evidenced by McAtee, who indicates anionic lathering surfactants, including alkyl ether sulfates, generate foam [col 3, line 58 and col 17, line 20]. Therefore the invention as a whole would have been *prima facie* obvious at the time it was made.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 11-23 and 32-39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the

Art Unit: 1619

relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The response filed June 24, 2009 has introduced NEW MATTER into the claims. Amended claim(s) 11 and 20 recite in admixture. Written description support is lacking for the admixture, as is instantly claimed. In the absence of support for “in admixture” in claims 11 and 20 is new matter and must be removed from the claims.

The response did not point out where support for amended claim(s) 11 and 20 could be found in the originally filed disclosure. Although the PTO has the initial burden of presenting evidence or reasons why persons skilled in the art would not recognize in the disclosure a description of the invention defined by the claims, when filing an amendment an applicant should show support in the original disclosure for new or amended claims. See MPEP 714.02 and 2163.06 (“Applicant should therefore specifically point out the support for any amendments made to the disclosure.”). Instant claim(s) 11 and 20 now recite limitations, which were not clearly disclosed in the specification as filed, and now change the scope of the instant disclosure as filed. Such limitations recited in amended claim(s) 11 and 20 which did not appear in the specification, as filed, introduce new concepts and violate the description requirement of the first paragraph of 35 U.S.C 112. Applicant is required to provide sufficient written support for the limitations recited in present claim(s) 11 and 20 in the specification or claims, as-filed, or remove these limitations from the claims in response to this Office Action.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 1619

Claim 33 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The instant claim contains the acronym “PET”. It would be unclear to one of ordinary skill what is meant by PET. Examiner suggests the complete name associated with PET be included within the claim for clarification.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-17, 20-22, and 36-39 are/remain rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pre-grant Publication 2005/0031847 (Martens et al) for the reasons of record including the reasons of record stated in the Action mailed on February 24, 2009. The arguments directed against this rejection have been discussed above with regard to each of the references.

Claims 11, 18, 20-23, and 33 are/remain rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pre-grant Publication 2005/0031847 (Martens et al) as applied to claims 11-17, 20-22, and 36-39 above, and further in view of U.S. Patent 4,600,620 (1986, Lloyd et al) for the reasons of record including the reasons of record stated in the Action mailed

Art Unit: 1619

on February 24, 2009. The arguments directed against this rejection have been discussed above with regard to each of the references.

Claims 11, 20, and 32 are/remain rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pre-grant Publication 2005/0031847 (Martens et al) as applied to claims 11-17, 20-22, and 36-39 above, and further evidenced by U.S. Patent 6,280,757 (2001, McAtee et al) for the reasons of record including the reasons of record stated in the Action mailed on February 24, 2009. The arguments directed against this rejection have been discussed above with regard to each of the references.

Claims 11, 20, and 34-35 are/remain rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pre-grant Publication 2005/0031847 (Martens et al) as applied to claims 11-17, 20-22, and 36-39 above, and further in view of U.S. Pre-grant Publication 2002/0102289 (Drucks et al).

The instant claims recite a cleansing article, wherein the cleansing article comprises a textile that is impregnated with a preparation comprising in admixture, 1-30% of one or more anionic surfactants and at least 8% of one or more lipids which are liquid or viscous at room temperature, wherein the lipid comprises C₁₂₋₁₅ alkyl benzoate or octyldodecanol.

Martens teaches a non-woven fabric cleansing wipe comprising an aqueous and lipid phase [pg 1, par 1 and pg 2, par 17]. The lipid phase can contain alkyl esters of C₁₂₋₂₄ fatty acids [pg 5, par 76] *claim 34* and C₁₂₋₂₄ fatty alcohols [pg 6, par 103] *claim 35*, and the oil content is at

Art Unit: 1619

least 50% [pg 5, par 88]. *claim 20* The aqueous phase can comprise anionic surfactants (sodium laureth sulfate [pg 13, par 232]) as emulsifiers in amounts of 0.5-50% [pg 21, par 363]. *claim 11*

Martens does not teach a specific embodiment with both the lipid and aqueous phase contained therein, C₁₂₋₁₅ alkyl benzoate, or octyldodecanol.

Drucks teaches cosmetic and dermatological wipes with an impregnated oil phase. The oils used in the invention include C₁₂₋₁₅ alkyl benzoate or octyldodecanol [pg 2, par 24].

One of ordinary skill in the art at the time of the invention would have been motivated to optimize the amounts of surfactant and lipid in the wipe of Martens for effective removal of oil and water compatible soils [pg 1, par 15]. Furthermore, Martens teaches the two phases (lipid and aqueous containing surfactant) may be mixable or solubilized into each other [pg 3, par 45]. With regard to C₁₂₋₁₅ alkyl benzoate and octyldodecanol, one of ordinary skill in the art would have been motivated to use C₁₂₋₁₅ alkyl benzoate, or octyldodecanol in the invention of Martens with a reasonable expectation of success as Martens teaches alkyl esters of C₁₂₋₂₄ fatty acids and C₁₂₋₂₄ fatty alcohols can be used in the lipid phase.

Therefore the invention as a whole would have been *prima facie* obvious at the time it was made.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office Action. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1619

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE MONTH shortened statutory period, then the shortened period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TRACEY SIMMONS WILLIS whose telephone number is (571)270-5861. The examiner can normally be reached on Monday to Friday from 8:30 am to 5:30 pm. The examiner can also be reached on alternate Fridays from 8:30 am to 12:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler, can be reached at (571)272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/T. S.W./

Examiner, Art Unit 1619

Application/Control Number: 10/578,727

Page 9

Art Unit: 1619

/YVONNE L. EYLER/ Supervisory Patent Examiner, Art Unit 1619